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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 653.

LONDON & LANCASHIRE INSURANCE COMPANY, LTD., A CORPORATION, PETITIONER,

VS.

GAS SERVICE COMPANY, A CORPORATION, RESPONDENT.

PETITIONER'S REPLY BRIEF.

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I. The record does not show any representations made by plaintiff's assignors as to the condition of the particular service line here involved; nor does the record show any reliance by respondent upon the city permit (Exhibit 1); and the decision of the Court of Appeals is not based upon any such grounds 1

II. The Missouri decisions cited by respondent are not in point because they do not involve the question of the liability of a distributor of gas as affected by the rules and regulations on file with the Missouri Public Service Commission 3

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No. 6[illegible]

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[illegible]PORATION, PETITIONER,

LONDON & LANCASHIRE
LTD., A CORPORATI[illegible] VS.

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GAS SERVICE COMPAN
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PETITIONER'S R[illegible]

[illegible] ARGUMENT.

ARGUM[illegible] I.

I. [illegible] Not Show Any Representations
[illegible]f's Assignors As to the Condition
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Show Any Reliance by Respond-
ty Permit (Exhibit 1); and the
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The Record Does Not Sho
Made by Plaintiff's Assigno
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Does the Record Show Any
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Decision of the Court of App

Any Such Gtement at page 3 of its brief implies
de some sort of a representation to re-

Respondent's statement at
that Nina Morris made some sor

spondent as to the condition of the service line when on Monday, October 25, 1948, she requested respondent at its business office to install its meter in the residence (R. 10). The record, however, shows the following is all that occurred:

> "On Monday, October 25, 1948, she requested defendant at its business office to install its meter in the residence at 2020 E. 15th Street. Defendant's employee said they would get to it as soon as they could."

Respondent's statement at page 3 of its brief also infers that the gas connections involved in the case at bar were not made by respondent until Mrs. Morris executed Exhibit 3 (R. 21) and same was displayed to respondent's superintendent Schumacher. Said exhibit 3 (R. 21) shows on its face that it was signed by Mrs. Morris on 9-5-1941, over seven years before the explosion, and when she lived at an entirely different address. Examination of respondent's superintendent Schumacher's testimony at R. 23 shows plainly that Schumacher or his department placed no reliance one way or the other on Exhibit 3 so far as the installation at 2020 E. 15th was concerned. This is further shown by the fact that respondent's answer (R. 48) contains no allegation of any reliance by respondent in this particular instance on Exhibit 3 and does not even refer to Exhibit 3.

As to Exhibit 1, the city permit (R. 18), the record clearly shows that the respondent never relied upon this permit as indicating that any inspection had been made by the city inspector which would have disclosed a leak in the service line between the meter and the curb. All the evidence in the case is that the city inspector inspected only the "house lines" from the meter into the house and did not inspect from the meter to the curb and that this

practice was a matter of common knowledge in the gas and plumbing trade. On this point we invite attention to pages 4 and 5 of our petition herein and the record references there made.

Finally, we wish to point out that the decision of the Court of Appeals is not based on the effect alleged by respondent to be given Exhibits 1 and 3, but is based on the court's erroneous interpretation of respondent's rules and regulations and their effect under the Missouri law.

II.

The Missouri Decisions Cited by Respondent Are Not in Point Because They Do Not Involve the Question of the Liability of a Distributor of Gas As Affected by the Rules and Regulations on File with the Missouri Public Service Commission.

The Missouri decisions cited by respondent do not, in any instance, involve the question here presented, namely, the liability under the Missouri law as affected by the rules and regulations filed as required by the Public Service Commission law. Respondent begs the question by asserting that under the Missouri law there is no duty on respondent to inspect service lines, whereas the question here is whether the decision of the Court of Appeals is in conflict with the Missouri law where the respondent's own rules, filed as required by law with the Public Service Commission, specifically require respondent to make an inspection of the lines before turning on the gas, where the lines are installed by a plumber, as was the case here. Such is the language of Rule 32 (R. 2-3), requiring two inspections by the respondent, one before and one after the lines are concealed, as follows:

> "Rule (32). *All parts of a gas supply system up to and including meter connections, when installed by*

> *a gas fitter or plumber* on the premises of a prospective customer, shall be reported to and *inspected by the company* before it is concealed *and before it is connected with the main or service pipe which contains unmeasured gas*" (Emphasis ours).

Respondent relies upon the Missouri cases summarized by the Court of Appeals in its first decision herein, *Gas Service Co.* v. *London & Lancashire Ins. Co.*, 188 F. 2d 404, but in that decision the question of the rules and regulations was not before the court, and the cause was remanded by the Court of Appeals for the express purpose of permitting petitioner upon retrial "to present the question of the effect of the Rules and Regulations of the Public Service Commission of the State of Missouri governing the furnishing of gas service" (188 F. 2d l. c. 411).

Respondent's brief and argument confirms our contention that the effect of the present decision of the Court of Appeals is to relieve respondent from liability even in a case where it has actual notice of the leak in a service line, because at the same moment, under respondent's rule 41 (R. 7), requiring the customer to maintain the line "in safe, efficient and proper operating conditions" the customer is guilty of contributory negligence as a matter of law. For example, on page 10 of its brief, respondent argues that even if respondent violated its rule, there was no testimony in the record that petitioner's assignors were safely maintaining the service line at the time in question. This is merely another way of arguing that there is no liability because petitioner's assignors were in violation of respondent's rule 41. To uphold such an argument would mean that respondent by its own rules has effectively insulated itself from all liability in leak cases.

As for respondent's argument that petitioner is seeking to hold respondent as an insurer, this falls, we be-

lieve, when it is seen that petitioner's claim is based on a violation by respondent of its own rules, which do impose a duty to inspect, under the present circumstances, before the gas is turned on. If respondent is an insurer on this theory (which we deny) it is due to its own rules.

Respondent cites *Gas Service Company* v. *Helmers*, 179 F. 2d 101, for the proposition that where there is a conflict between the Missouri law and the company's rules that the Missouri law controls. But that was a case where the company's rule imposed a *lesser* duty than the Missouri law. Hence, the Helmers case is not in point, because here the effect of the rules, particularly rule 32 as pointed out above, is to modify the Missouri law by imposing a *greater* duty upon defendant than would otherwise be the case, and, there is, therefore, no conflict between the rules involved here and the Missouri law in the sense there was in the Helmers case.

CONCLUSION.

Wherefore, petitioner respectfully renews its prayer for a writ of certiorari herein.

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